

## Florida PACE Enabling Laws

Fla. Stat. Ann. §§ 570.70 – 570.715

Current through the 2019 Session of the Florida Legislature

### § 570.70. Legislative findings.

The Legislature finds and declares that:

- (1) A thriving rural economy with a strong agricultural base, healthy natural environment, and viable rural communities is an essential part of Florida. Rural areas also include the largest remaining intact ecosystems and best examples of remaining wildlife habitats as well as a majority of privately owned land targeted by local, state, and federal agencies for natural resource protection.
- (2) The growth of Florida's population can result in agricultural and rural lands being converted into residential or commercial development.
- (3) The agricultural, rural, natural resource, and commodity values of rural lands are vital to the state's economy, productivity, rural heritage, and quality of life.
- (4) The Legislature further recognizes the need for enhancing the ability of rural landowners to obtain economic value from their property, protecting rural character, controlling urban sprawl, and providing necessary open space for agriculture and the natural environment, and the importance of maintaining and protecting Florida's rural economy through innovative planning and development strategies in rural areas and the use of incentives that reward landowners for good stewardship of land and natural resources.
- (5) The purpose of this act is to bring under public protection lands that serve to limit subdivision and conversion of agricultural and natural areas that provide economic, open space, water, and wildlife benefits by acquiring land or related interests in land such as perpetual, less-than-fee acquisitions, agricultural protection agreements, and resource conservation agreements and innovative planning and development strategies in rural areas.

*History: S. 62, ch. 2001-279.*

### § 570.71. Conservation easements and agreements.

- (1) The department, on behalf of the Board of Trustees of the Internal Improvement Trust Fund, may allocate moneys to acquire perpetual, less-than-fee interest in land, to enter into agricultural protection agreements, and to enter into resource conservation agreements for the following public purposes:
  - (a) Promotion and improvement of wildlife habitat;
  - (b) Protection and enhancement of water bodies, aquifer recharge areas, wetlands, and watersheds;
  - (c) Perpetuation of open space on lands with significant natural areas; or
  - (d) Protection of agricultural lands threatened by conversion to other uses.

(2) To achieve the purposes of this section, the department may accept applications for project proposals that:

- (a) Purchase conservation easements, as defined in s. 704.06.
- (b) Purchase rural-lands-protection easements pursuant to this section.
- (c) Fund resource conservation agreements pursuant to this section.
- (d) Fund agricultural protection agreements pursuant to this section.

(3) Rural-lands-protection easements shall be a perpetual right or interest in agricultural land which is appropriate to retain such land in predominantly its current state and to prevent the subdivision and conversion of such land into other uses. This right or interest in property shall prohibit only the following:

- (a) Construction or placing of buildings, roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the easement, and except for linear facilities described in s. 704.06(11);
- (b) Subdivision of the property;
- (c) Dumping or placing of trash, waste, or offensive materials; and
- (d) Activities that affect the natural hydrology of the land or that detrimentally affect water conservation, erosion control, soil conservation, or fish or wildlife habitat, except those required for environmental restoration; federal, state, or local government regulatory programs; or best management practices.

(4) Resource conservation agreements will be contracts for services which provide annual payments to landowners for services that actively improve habitat and water restoration or conservation on their lands over and above that which is already required by law or which provide recreational opportunities. They will be for a term of not less than 5 years and not more than 10 years. Property owners will become eligible to enter into a resource conservation agreement only upon entering into a conservation easement or rural lands protection easement.

(5) Agricultural protection agreements shall be for terms of 30 years and will provide payments to landowners having significant natural areas on their land. Public access and public recreational opportunities may be negotiated at the request of the landowner.

(a) For the length of the agreement, the landowner shall agree to prohibit:

1. Construction or placing of buildings, roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the easement, and except for linear facilities described in s. 704.06(11);
2. Subdivision of the property;
3. Dumping or placing of trash, waste, or offensive materials; and
4. Activities that affect the natural hydrology of the land, or that detrimentally affect water conservation, erosion control, soil conservation, or fish or wildlife habitat.

(b) As part of the agricultural protection agreement, the parties shall agree that the state shall have a right to buy a conservation easement or rural land protection easement at the end of the 30-year term. If the landowner tenders the easement for the purchase and the state does not timely exercise its right to buy the easement, the landowner shall be released from the agricultural agreement. The purchase price of the easement shall be established in the agreement and shall be based on the value of the easement at the time the agreement is entered into, plus a reasonable escalator multiplied by the number of full calendar years following the date of the commencement of the agreement. The landowner may transfer or sell the property before the expiration of the 30-year term, but only if the property is sold subject to the agreement and the buyer becomes the successor in interest to the agricultural protection agreement. Upon mutual consent of the parties, a landowner may enter into a perpetual easement at any time during the term of an agricultural protection agreement.

(6) Payment for conservation easements and rural land protection easements shall be a lump-sum payment at the time the easement is entered into.

(7) Landowners entering into an agricultural protection agreement may receive up to 50 percent of the purchase price at the time the agreement is entered into, and remaining payments on the balance shall be equal annual payments over the term of the agreement.

(8) Payments for the resource conservation agreements shall be equal annual payments over the term of the agreement.

(9) Easements purchased pursuant to this act may not prevent landowners from transferring the remaining fee value with the easement.

(10) The department, in consultation with the Department of Environmental Protection, the water management districts, the Department of Economic Opportunity, and the Florida Fish and Wildlife Conservation Commission, shall adopt rules that establish an application process, a process and criteria for setting priorities for use of funds consistent with the purposes specified in subsection (1) and giving preference to ranch and timber lands managed using sustainable practices, an appraisal process, and a process for title review and compliance and approval of the rules by the Board of Trustees of the Internal Improvement Trust Fund.

(11) If a landowner objects to having his or her property included in any lists or maps developed to implement this act, the department shall remove the property from any such lists or maps upon receipt of the landowner's written request to do so.

(12) The department may use appropriated funds from the following sources to implement this section:

- (a) State funds;
- (b) Federal funds;
- (c) Other governmental entities;
- (d) Nongovernmental organizations; or
- (e) Private individuals.

Any such funds provided, other than from the Land Acquisition Trust Fund, shall be deposited into the Incidental Trust Fund within the Department of Agriculture and Consumer Services and used for the

purposes of this section, including administrative and operating expenses related to appraisals, mapping, title process, personnel, and other real estate expenses.

(13) No more than 10 percent of any funds made available to implement this act shall be expended for resource conservation agreements and agricultural protection agreements.

*History: s. 63, ch. 2001-279; s. 5, ch. 2002-4; s. 48, ch. 2002-295; s. 113, ch. 2005-2; s. 425, ch. 2011-142; s. 99, ch. 2014-150; s. 81, ch. 2015-229.*

#### **§ 570.715. Conservation easement acquisition procedures.**

(1) For less than fee simple acquisitions pursuant to s. 570.71, the Department of Agriculture and Consumer Services shall comply with the following acquisition procedures:

(a) Before conveyance of title by the department, evidence of marketable title in the form of a commitment for title insurance or an abstract of title with a title opinion shall be obtained.

(b) Before approval by the board of trustees of an agreement to purchase less than fee simple title to land pursuant to s. 570.71, an appraisal of the parcel shall be required as follows:

1. Each parcel to be acquired shall have at least one appraisal. Two appraisals are required when the estimated value of the parcel exceeds \$1 million. However, when both appraisals exceed \$1 million and differ significantly, a third appraisal may be obtained.

2. Appraisal fees and associated costs shall be paid by the department. All appraisals used for the acquisition of less than fee simple interest in lands pursuant to this section shall be prepared by a state-certified appraiser who meets the standards and criteria established by rule of the board of trustees. Each appraiser selected to appraise a particular parcel shall, before contracting with the department or a participant in a multiparty agreement, submit to the department or participant an affidavit substantiating that he or she has no vested or fiduciary interest in such parcel.

(c) A certified survey must be made that meets the minimum requirements for upland parcels established in the Standards of Practice for Land Surveying in Florida published by the department and that accurately portrays, to the greatest extent practicable, the condition of the parcel as it currently exists. The requirement for a certified survey may, in whole or in part, be waived by the board of trustees any time before acquisition of the less than fee simple interest. If an existing boundary map and description of a parcel are determined by the department to be sufficient for appraisal purposes, the department may temporarily waive the requirement for a survey until any time before conveyance of title to the parcel.

(d) On behalf of the board of trustees and before the appraisal of parcels approved for purchase under ss. 259.105(3)(i) and 570.71, the department may enter into option contracts to buy less than fee simple interest in such parcels. Any such option contract shall state that the final purchase price is subject to approval by the board of trustees and that the final purchase price may not exceed the maximum offer authorized by law. Any such option contract presented to the board of trustees for final purchase price approval shall explicitly state that payment of the final purchase price is subject to an appropriation by the Legislature. The consideration for any

such option contract may not exceed \$1,000 or 0.01 percent of the estimate by the department of the value of the parcel, whichever amount is greater.

(e) A final offer shall be in the form of an option contract or agreement for purchase of the less than fee simple interest and shall be signed and attested to by the owner and the department. Before the department signs the agreement for purchase of the less than fee simple interest or exercises the option contract, the requirements of s. 286.23 shall be complied with.

(f) The procedures provided in s. 253.025(9)(a)-(d) and (10) shall be followed.

(2) If the public's interest is reasonably protected, the board of trustees may:

(a) Waive any requirement of this section.

(b) Waive any rules adopted pursuant to s. 570.71, notwithstanding chapter 120.

(c) Substitute any other reasonably prudent procedures, including federally mandated acquisition procedures, for the procedures in this section, if federal funds are available and will be used for the purchase of a less than fee simple interest in lands, title to which will vest in the board of trustees, and qualification for such federal funds requires compliance with federally mandated acquisition procedures.

(3) The less than fee simple land acquisition procedures provided in this section are for voluntary, negotiated acquisitions.

(4) For purposes of this section, the term "negotiations" does not include preliminary contacts with the property owner to determine availability or eligibility of the property, existing appraisal data, existing abstracts, and surveys.

(5) Appraisal reports are confidential and exempt from s. 119.07(1), for use by the department and the board of trustees, until an option contract is executed or, if an option contract is not executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees. However, the department has the authority, at its discretion, to disclose appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques, if the department determines that disclosure of such reports will bring the proposed acquisition to closure. The department may also disclose appraisal information to public agencies or nonprofit organizations that agree to maintain the confidentiality of the reports or information when joint acquisition of property is contemplated, or when a public agency or nonprofit organization enters into a written multiparty agreement with the department. For purposes of this subsection, the term "nonprofit organization" means an organization whose purposes include the preservation of natural resources, and which is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code. The department may release an appraisal report when the passage of time has rendered the conclusions of value in the report invalid or when the department has terminated negotiations.

*History:* s. 4, ch. 94-240; s. 852, ch. 95-148; s. 5, ch. 96-389; s. 115, ch. 96-406; s. 12, ch. 98-336; s. 19, ch. 99-247; s. 12, ch. 2008-229; s. 27, ch. 2016-233.

*Note.*—Subsection (5) former s. 259.041(7).

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